Indeed, his release on two occasions of the lorry contradicted this evidence.

I am of opinion therefore that as the plaintiff had not refused to pay and as local custom and usage had not been proved the defendant's retention of plaintiff's lorry was wrongful.

I must, however, criticise the plaintiff for acting, in my opinion, most unreasonably. At any time after receiving the message on the 19th September that defendant had retained the lorry, he could have paid the bills, under protest if necessary, and obtained possession of his lorry.

It is clear from the telegram plaintiff sent that he was more concerned with "loss of face" than with the temporary loss of his lorry. The telegram was as follows: "Release P5178 Lorry immediately Libel Suit contemplated."

These are factors that must be taken into consideration in assessing damages. Prompt and reasonable action by the plaintiff by paying the amount claimed would have caused the release of the lorry in at the most two days. I see no reason for not accepting his figure of $100 a day for hiring another lorry and I consider $200 a reasonable and sufficient sum as damages in the circumstances of this case.

I therefore give judgment for the plaintiff for $200 and costs.

Order accordingly.

Solicitors: *Hogan, Adams & Allan; Conaghan, Wreford, & Thornton.*

WOO PENG CHONG v. MALAYAN TOBACCO DISTRIBUTORS LTD.

[O. C. J. (Buhagiar J.) June 27, 1955]

[K. L. — Civil Suit No. 332 of 1955]

Negligence — Whether breach of duty imposed by Statute gives a right of civil action.

This was an action for damages in respect of personal injuries sustained by the plaintiff when a motor-cycle he was riding came in collision with a motor-car belonging to the defendants and driven at that time by their servant. The learned Judge found that there was no negligence on the part of the defendants and dismissed the suit. One of the submissions made on behalf of the plaintiff was that the defendants' driver was wrong in crossing from one lane to the other through the gap in the kerb and that he should have driven right up to the end of the kerb and "U" turned there to get to the other side of the road.

Held: even if what the defendants' driver did was a breach of a regulation, such contravention by him was immaterial in default of any negligence being the cause of the accident.

[Editorial Note: See the case of Ng Siew Eng & Anor. v. Loh Tuan Woon (1955) M.L.J. 89].

Cases referred to:—

(1) *Cutler v. Wandsworth Stadium Ltd.* (1949) A.C. 398; (1949) 1 All E.R. 544.

(2) *Newman v. Francis* (1953) 1 W.L.R. 402; *The Times*, January 22, 1953.

ACTION FOR DAMAGES.

M. L. R. Doraiswamy Aiyer for the plaintiff.

D. G. Rawson for the defendants.

Buhagiar J.: — In this suit the plaintiff claimed damages in respect of personal injuries sustained by him on the 8th December, 1953, when the motor-cycle he was riding came in collision with a motor-car belonging to the defendant firm and driven at the time by Saidi bin Zainudin, a servant of the defendant firm.

The accident occurred in Ampang Road, Kuala Lumpur, opposite the Federal Dispensary and on the Federal Dispensary side of the road. That part of Ampang Road where the accident occurred is divided in two lanes by a concrete kerb along the middle so that traffic coming towards Kuala Lumpur from Ampang travel on one side of the kerb and traffic away from Kuala Lumpur towards Ampang travel on the other side.

The defendant's car was at the time being used by Mr. J. C. Cordy of the defendant firm. He went to the Federal Dispensary and the car was parked by the driver in the car park by the Federal Dispensary. When Mr. Cordy finished his business at the Federal Dispensary he went to the car with the intention of proceeding towards Kuala Lumpur. The car left the car park and went up to the kerb with the object of crossing through a gap in the kerb to the other side of the road. Before the car crossed to the other side of the road the plaintiff's motor-cycle came into collision with the front part of the car and he was thrown right over the bonnet.

Now, two versions were given as to how this accident occurred. The plaintiff stated that the defendants' car shot out of the car park to the middle of the road and he had no opportunity of avoiding it and collided with it. He said he was keeping a proper look-out and was going at a reasonable speed that is about 25 miles per hour.

The defendants' version is that the car had been at a standstill when the accident occurred and the cause of the accident was that the plaintiff was not keeping a proper look-out and was going at an excessive speed.

Saidi bin Zainudin (D. W. 3) the driver of the defendants' car stated that on leaving the car park he looked for traffic coming from Kuala Lumpur direction, saw none and went up to the gap in the kerb

dividing the road in two lanes with the object of crossing to the other side of the road and go towards Kuala Lumpur. When he came to the gap he stopped to allow traffic coming from Ampang to pass. He had been still for about ten seconds when the plaintiff came in collision with the car. He saw a motor-cyclist (the plaintiff) just before the collision; the cyclist was coming at a terrific speed and could not avoid the accident; he was bent over the handle-bars.

Mr. Cordy stated that there was no traffic coming from Kuala Lumpur before the car left the park to go to the kerb in the middle of the road; the car stopped by the kerb opposite the gap waiting for traffic from Ampang to go by. He saw a motor-cyclist (the plaintiff) coming from the direction of Kuala Lumpur, bent over the handle-bars in a racing posture and was looking behind him or to his left; he was going at a great speed. It seems that he did not see the car; if he had he could easily have passed behind the car as there was plenty of room. Instead he drove right into the car.

Mrs. Legge (D.W. 2) who had just come out of the Federal Dispensary and was on the five foot way witnessed the accident. She said that the plaintiff was coming from the direction of Kuala Lumpur at a terrific speed; he had his head down and was not looking where he was going; she stated that she saw him looking behind him as if he was being raced. He struck the car which was stationary waiting to go through the gap to the other side of the road. At the time there was no traffic on her side of the road except the plaintiff; there were other cars (about four or five) on the other side of the road coming from the direction of Ampang. In cross-examination she said that it was quite untrue that the defendant's car shot out of the car park and had the plaintiff not hugged the crown of the road he would have been able to pass behind the stationary car.

I did not consider that the evidence given by Harun bin Arifin (P.W. 3) who was at the time of the accident attached to the Traffic Branch, Kuala Lumpur, was helpful. On receiving a report about the accident he proceeded to the scene to investigate. He found brake marks on the road which seemed to him to be fresh; a brake mark he attributed to the motor-cycle and another series of brake marks attributed to the motor car. When he arrived on the scene, however, both the motor car and the motor-cycle had been removed from the spot of the accident. There is no conclusive evidence that the brake marks attributed to the car were made by the defendants' car and even if they had been made by that car they might have been caused when the car stopped by the gap in kerb, before the approach of the plaintiff.

It was submitted on behalf of the plaintiff that the defendants' driver was wrong in crossing from one lane to the other through the gap in the kerb and that he should have driven right up to the end of the kerb and "U" turned there to get to the other side of the road. I am not aware of any traffic or other regulations, and my attention was not drawn to any, prohibiting such action by drivers. But even if there is such a prohibition the contravention by the defendants' driver is immaterial in default of any negligence being the cause of the accident. This is the principle laid down in the line of cases ending with *Cutler v. Wandsworth Stadium Ltd.*[1]. In that case it was decided that a breach of a duty imposed by statute does not give a right of civil action to the person who is damnified by the breach unless it is expressly or impliedly provided by the statute that such right is to accrue. The principle laid down in that case was followed in *Newman v. Francis*[2]; in this case the plaintiff claimed damages for personal injuries sustained when she was knocked over by an Alsatian dog, belonging to the defendant, on Hackney Downs. It was alleged by the plaintiff *inter alia* that the defendant was in breach of by-law 21 of the London County Council by-laws applying to Hackney Downs which provided that dogs should be kept under proper control and be effectually restrained from injuring, annoying or disturbing any person.

I accepted the version given by the defendants' witnesses; I was satisfied that they were giving a true account of the facts, and, I may add, I was particularly impressed by the clarity in which Mrs. Legge, a completely independent witness, gave her account of the accident.

I found, therefore, that the defendants' driver did not shoot out of the car park, that the defendants' car had been at a standstill by the kerb some time before the approach of the plaintiff, that the plaintiff was going at an excessive speed without keeping a proper look-out. The cause of the accident was solely due to the negligence of the plaintiff.

For the above reasons I held that there was no negligence on the part of the defendants and dismissed the suit with costs.

Judgment for the defendants.

Solicitors: *Doraiswamy Aiyer & Kok Thoy; Shearn, Delamore & Co.*